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BEFORE THE ARIZONA CORPORATION COMMISSION
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CHAIRMAN

AUG 23 2000

JIM IRVIN

COMMISSIONER

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WILLIAM A. MUNDELL
COMMISSIONER

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IN THE MATTER OF THE APPLICATION OF
H2O, INC., FOR AN EXTENSION OF ITS
EXISTING CERTIFICATE OF CONVENIENCE
AND NECESSITY.

DOCKET NO. W-02234A-00-0371

IN THE MATTER OF THE APPLICATION OF
JOHNSON UTILITIES, L.L.C., DBA JOHNSON
UTILITIES COMPANY FOR AN EXTENSION
FOR ITS CERTIFICATE OF CONVENIENCE
AND NECESSITY TO PROVIDE WATER AND
WASTEWATER SERVICE TO THE PUBLIC IN
THE DESCRIBED AREA IN PINAL COUNTY,
ARIZONA.

DOCKET NO. W-02987A-99-0583

PROCEDURAL ORDER

BY THE COMMISSION:

On October 18, 1999, Johnson Utilities Company ("Johnson") filed an Application to extend its existing Certificate of Convenience and Necessity ("CC&N") for water and wastewater services ("Application") with the Arizona Corporation Commission ("Commission").

On November 1, 1999, Johnson filed an Amended Application. On January 21, 2000, Johnson filed a letter acknowledging that Johnson waives the requirement of A.A.C. Rule 14-2-411(c) relating to the processing of the Application.

On June 15, 2000, Johnson filed a Second Amended Application revising the requested expansion area.

On July 5, 2000, Johnson filed a Third Amended Application again revising the requested expansion area stating that Johnson has received several additional requests from other property owners to include their properties within its service area ("J-Application").

On May 30, 2000, H2O, Inc. ("H2O") filed an Application for an Extension of its Existing CC&N ("H-Application").

On July 5, 2000, Johnson applied to intervene in H2O's Application for an extension of its CC&N. Johnson stated that it is seeking expansion of its existing water and wastewater certificated

1 area to include some of the same areas in which H2O is seeking a certificate expansion. In addition,
2 Johnson is seeking deletion of the H2O certificate as to one parcel so that Johnson may be given a
3 certificate to serve that parcel.

4 In the alternative, Johnson requests that H2O's proceeding be consolidated with Johnson's
5 Application for expansion of its CC&N. Johnson states that its participation in this proceeding will
6 not unduly burden the nature or scope of the proceeding.

7 On July 14, 2000, H2O filed a Response to Johnson's Application for Leave to Intervene
8 stating that Johnson's intervention would unduly broaden the scope of this proceeding and cause
9 prejudicial delay. H2O stated that Johnson's participation in this matter would result in the numerous
10 issues and problems associated with Johnson's own application to extend its CC&N being interjected
11 into H2O's proceeding.

12 On July 21, 2000, Johnson filed a Reply to H2O's Response to Johnson's Application for
13 Leave to Intervene. Johnson states that because Johnson and H2O have filed conflicting applications
14 to extend certificates to the same currently uncertificated area, the Commission must compare the
15 competing applications to determine which applicant should be certificated to serve the area and cited
16 Decision No. 61849 in support. Johnson argued that the Commission must either allow Johnson to
17 intervene in the H2O proceeding or consolidate the Johnson and H2O proceedings so that the
18 Commission can make a side by side comparison of the competing applicants.

19 On July 28, 2000, Staff of the Commission ("Staff") filed a Motion to Consolidate and
20 Request for Procedural Order recommending that the Johnson and H2O matters be consolidated as
21 the issues relate to overlapping requests for certain contested territory ("contested territory"). Staff
22 also stated that separate hearings should first be held on the issues and territory that are presently
23 uncontested ("uncontested territory"), and that subsequent to those hearings, a separate consolidated
24 hearing should be held on the issues concerning the overlapping requests.

25 Additionally, Staff further believes that the hearing dates should be set for the taking of
26 evidence on the as yet uncontested issues; that the Johnson and H2O applications should be
27 consolidated for the purpose of taking evidence on the issues concerning the overlapping territory;
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1 that an additional hearing date should be set for consideration of the overlapping territory issues; and
2 that a schedule should be set for the filing of testimony on the overlapping territory issues.

3 On August 1, 2000, Johnson filed a Response to Commission Staff's Motion to Consolidate
4 stating that Johnson supports Staff's Motion to Consolidate with one clarification. Johnson stated
5 that it filed an application requesting an extension of its existing certificate for both water and
6 wastewater service while H2O's application is just for water service. Johnson also requested that its
7 application for wastewater service be included as part of the bifurcated initial hearing on the
8 uncontested issues as H2O has not contested Johnson's request to provide wastewater service even in
9 areas in which H2O is currently certificated to provide water service or in the areas in which H2O is
10 seeking to extend its water certificate.

11 On August 3, 2000, H2O filed a Response to Staff's Motion to Consolidate and Request for
12 Procedural Order stating that Staff has failed to demonstrate that the requirements for consolidation
13 set forth in A.A.C. R14-2-109(H) have been satisfied. H2O opined that Staff's summary of the
14 pending applications is incomplete as there was no conflict between Johnson and H2O's application
15 until Johnson amended its application on June 15, 2000 and on July 3, 2000. H2O states that
16 Johnson's latest amendments include the entire area covered by H2O's application so Staff's
17 recommendation would elevate Johnson's application to a fast track status while H2O's application
18 would be placed on hold.

19 On August 8, 2000, Johnson filed a Reply to H2O's response to Staff's Motion to Consolidate
20 stating that the two presently certificated water companies filed applications for certificate extensions
21 into the same area: H2O seeks to expand from the north and Johnson from the south and southwest.
22 Johnson stated that the Commission must compare these two requests and select one of them to
23 provide service in the contested areas. Johnson further opined that H2O apparently feels that because
24 it filed its request a few weeks before Johnson, that H2O should be awarded the new area and the
25 Commission should not even consider Johnson's request. Johnson stated that the issues with respect
26 to the competing certificate areas are substantially the same and no party's rights will be prejudiced
27 by this consolidation as both companies want expedited treatment and both companies want to
28 provide water in the same service area to the same property owners. Johnson believes that such

1 consolidation is consistent with A.A.C. R14-3-109(H) and as Staff recommended, these proceedings
2 must be consolidated.

3 On August 9, 2000, Staff filed a Reply to H2O's Response to Staff's Motion to Consolidate
4 and Request for Procedural Order. H2O's Response claims that Staff failed to demonstrate that the
5 requirements set forth in A.A.C. R14-3-109(H) are satisfied in this case. Staff opined that the issues
6 in H2O's and Johnson's applications are substantially the same, if not exactly the same, as both
7 applications request that the territory encompassed by their CC&Ns be extended to cover the same
8 area. Staff contends that it does not intend to prejudice either H2O or Johnson, and as such
9 recognizes that a separate hearing cannot be held on H2O's uncontested areas as there are none. Staff
10 remains unopposed to having a separate hearing on the CC&N territory that has been requested by
11 Johnson but not by H2O, and does not believe that such bifurcation would result in any prejudice to
12 H2O or Johnson.

13 Pursuant to A.A.C. R14-3-109(H), two or more proceedings may be consolidated in one
14 hearing when it appears that the issues are substantially the same and that the rights of the parties will
15 not be prejudiced by such procedure.

16 Based on the above information, two different utilities have filed competing applications for
17 certain of the same territory. As both Johnson and H2O seek to serve the same territory, it is
18 appropriate and necessary that both entities be present at the same hearing in order to offer their
19 evidence and rebut the other party's evidence. As the issues are substantially the same, it is therefore
20 appropriate to consolidate them.

21 In order to facilitate the processing of the above-referenced applications, Johnson shall submit
22 maps that show which territory is overlapping H2O's request for extension, and a map delineating its
23 request for deletion and extension within a portion of H2O's territory. In addition, Johnson shall
24 submit maps regarding the non-contested portions of its request, both for the requested water and
25 wastewater services.

26 IT IS THEREFORE ORDERED that Johnson Utilities Company's Application for extension
27 of its Certificate of Convenience and Necessity referenced above and H2O, Inc.'s Application for
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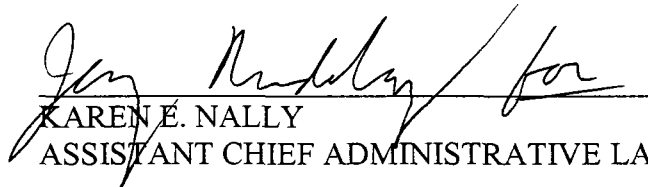
extension of its Certificate of Convenience and Necessity as referenced above are hereby consolidated for the contested portions of the above referenced applications.

IT IS FURTHER ORDERED that the remaining portion of Johnson Utilities Company's application regarding non-contested territory including both water and wastewater services shall be bifurcated and not consolidated.

IT IS FURTHER ORDERED that Johnson Utilities Company shall submit maps that show which territory is overlapping H2O, Inc.'s request for extension, and a map delineating its request for deletion and extension within a portion of H2O Inc.'s territory; in addition, Johnson shall submit maps regarding the non-contested portions of its request, both for the requested water and wastewater services.

IT IS FURTHER ORDERED that a Procedural Order setting forth the procedural schedules for hearings on these matters shall issue forthwith.

DATED this 23rd day of August, 2000.


KAREN E. NALLY
ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed/delivered this 23rd day of August, 2000 to:

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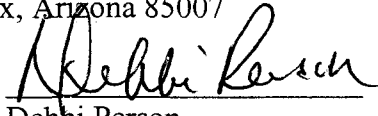
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